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Supreme Court of the United States

OCTOBER TERM, 1950

No. 32

THE GREAT ATLANTIC & PACIFIC TEA COMPANY,

Petitioner,

v.

SUPERMARKET EQUIPMENT CORPORATION, SUBSTITUTED FOR EVELYN B. BRADLEY, AND JOE WEINGARTEN.

MEMORANDUM IN OPPOSITION TO MOTION AND PETITIONS FOR RE-HEARING

JOHN H. GLACCUM,
Attorney for Petitioner.

MUNN, LIDDY & GLACCUM,
Of Counsel.

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The Respondent has filed a Petition for Re-hearing by this Court of its decision of December 4, 1950. In addition there has been filed a petition for leave to file a brief *amicus curiae* by several gentlemen of the Illinois Bar. Your Petitioner wishes to note its objection to these petitions and to point out that no re-hearing is necessary or warranted in this case.

Petition Filed by Respondent

Respondent has listed six alleged reasons for granting re-hearing. It is submitted that the first one presents a strong argument for denying re-hearing and merely states that the definition of a test to be applied to combination patents was needed, and the Court has given such a definition.

Point No. II makes reference to the conventional pool-ball rack and overlooks the fact that the Varnum patent (Defendant's Exhibit F, R. p. 427) is not a conventional rack closed at its end but one which will open, and to that extent is "self-unloading".

It is not seen how any interpretation of the lower courts' findings different from that spelled out by this court can be made, and Respondent's Points III and IV must thereby fall.

The same is true of Points V and VI. Mere increased efficiency is not invention, and the record is replete with improvements made by the Tea Company to increase efficiency and reduce costs, none of which are patentable.

Petition *Amicus Curiae*

The Petitioners filing this Petition and Brief have apparently confused the opinion of this Court with the concurring opinion of two of its justices and would appear to base their petition upon a misunderstanding of the facts and the record before this Court.

It is pointed out in Petitioner's Principal Brief that the lower courts based their finding on an element not included in the claims in issue, which, of course, is clearly erroneous. (*Altoona Publix Theatres, Inc.* v. *American Tri-Ergon Corporation*, 294 U. S. 477, 487.) In addition the Brief shows a misunderstanding of the prior art. At page 2 it refers to all pool-ball trays as forming a closed triangle which must be lifted to be removed. This is obviously not true of the rack shown in the Varnum patent (Exhibit F, 427) which is open ended and "self-unloading".

CONCLUSION

It follows that the Petitions for Re-hearing should be denied.

Respectfully submitted,

JOHN H. GLACCUM,
Attorney for Petitioner.

MUNN, LIDDY & GLACCUM,
Of Counsel.